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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THE GILLETTE COMPANY

Appeal 2008-6111
Application 10/798,140
Technology Center 3700

Decided¹: February 11, 2009

Before JAMESON LEE, SALLY C. MEDLEY, and MICHAEL P.
TIERNEY, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, The Gillette Company of Boston, MA (Gillette), under 35 U.S.C. § 134(a) from a final rejection of claims 1-30, 32-60, 66, and 67. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part and enter new grounds of rejection pursuant to 37 C.F.R. § 41.50(b).

References Relied on by the Examiner

Petrillo	3,797,657	Mar. 19, 1974
Kohring	5,518,114	May 21, 1996
Petricca	6,041,926	Mar. 28, 2000
Rozenkranc	6,276,061	Aug. 21, 2001

The Rejections on Appeal

The Examiner rejected claims 1, 2, 4, 5/2, 6, 7/5/2, 8-11, 18, and 28 under 35 U.S.C. § 102(b) as anticipated by Petrillo.

The Examiner rejected claims 1-5, 8, 9, 21, 28, 31-35, 38-48, 51, and 52 under 35 U.S.C. § 102(b) as anticipated by Kohring.

The Examiner rejected claims 6, 7/5/3, 29, 30, 36, 37, 59, 60, and 66 under 35 U.S.C. § 103(a) as unpatentable over Kohring.

The Examiner rejected claims 1, 18, 19, 20, 23-28, 48-50, 54, and 56-58 under 35 U.S.C. § 103(a) as unpatentable over Kohring and Petricca.

The Examiner rejected claims 55 and 67 under 35 U.S.C. § 103(a) as unpatentable over Kohring, Petricca, and Rozenkranc.

The Invention

The invention relates to a dispenser for razor blade cartridges. (Spec. 3-4.)

Claim 1 is reproduced below (Claims App'x 8:1-10):

1. A dispenser for razor blade cartridges, each cartridge including a blade unit and a cartridge connecting portion for connecting the cartridge to a handle, the dispenser comprising

a housing structure including a base and angled cartridge dividers that define sections for receiving respective cartridges and retaining the cartridges in predetermined positions that permit connection of a handle connecting structure on the handle to one of the cartridges as the handle is moved toward the cartridge;

each section comprising a latch shaped and positioned to interact with a corresponding resilient feature on the blade unit of the cartridge, the latch being sufficiently rigid to resist movement during removal of a cartridge from the dispenser.

B. ISSUES

1. Has Gillette shown that the Examiner erred in finding that Petrillo satisfies the requirement of a latch that is “sufficiently rigid to resist movement during removal of a cartridge from the dispenser?”

2. Has Gillette shown that the Examiner erred in finding that Kohring satisfies the requirement of a latch that is “sufficiently rigid to resist movement during removal of a cartridge from the dispenser?”

3. Has Gillette shown that the Examiner erred in finding that the housing of Kohring's disposable razor blade cartridge C has a “resilient feature” or is a “resilient latching portion?”

4. Has Gillette shown that the Examiner erred in determining that the teachings of Kohring, Petricca and Rozenkranc teach a protective feature that operates to protect a trimming blade from damage?

C. FINDINGS OF FACT

1. Petrillo discloses a blade dispenser having resilient retaining lugs or latch posts 24, 26 that extend upwardly from a bottom surface of the dispenser and include opposing recesses for engaging and retaining opposite sides of a blade unit 20. (Petrillo 1:21-24; 3:42-46.)

2. Blade unit 20 is retained within the dispenser by its edges “snapping” into the opposing recesses. (Petrillo 3:4-12.)

3. The blade unit is released by being pivotally or linearly drawn from the dispenser such that surfaces of the blade act as camming surfaces that cause the latch posts to flex apart. (Petrillo 3:28-31.)

4. Kohring discloses “disposable cartridges” that are retained within a receptacle and dispensed from that receptacle after connection to a razor handle. (Kohring 1:5-10.)

5. The level of ordinary skill in the art at the time of the invention is such that a person of ordinary skill in the art would have known that “disposable cartridges” include standard disposable razor blade cartridges that are commercially available and have housings made of plastic.

6. In Kohring, means for retaining a cartridge C within a receptacle 10 is formed by flanges 32 and 33, detents 34 and 35, spacer elements 38 and 39, and support members 30 and 31. (Kohring 3:52-57.)

7. Kohring expressly discloses that the spacer elements 38 and 39 support a cartridge “against sidewise movement.” (Kohring 3:55-58.)

8. Kohring also discloses that the cartridge retaining means is “designed of a flexibility to firmly retain the cartridge within the receptacle and release the cartridge from the receptacle for use. . . .” (Kohring 4:22-25).

D. PRINCIPLES OF LAW

To establish anticipation under 35 U.S.C. § 102, each and every element in a claim, arranged as is recited in the claim, must be found in a single prior art reference. *Karsten Manufacturing Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). Anticipation can be found when a claim limitation is inherent or otherwise implicit in the relevant reference. *Standard Havens Products, Inc. v. Gencor Industries, Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991).

During examination, claim terms are given their broadest reasonable interpretation consistent with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989); *In re Prater*, 415 F.2d 1393, 1404 (CCPA 1969).

E. ANALYSIS

The anticipation rejection based on Petrillo

The Examiner rejected claims 1, 2, 4, 5/2, 6, 7/5/2, 8-11, 18, and 28 as anticipated by Petrillo. We focus on the disputed limitations. Gillette disputes that Petrillo discloses the limitation in each of independent claims 1 and 28 of a latch that is “sufficiently rigid to resist movement during removal of a cartridge from the dispenser.”

The Examiner pointed to Petrillo’s latch post 26 as satisfying that requirement. (Ans. 3:19-4:2.)

Gillette argues that Petrillo’s latch posts 26 flex apart and thus move when a cartridge is removed from Petrillo’s dispenser. According to Gillette, latches that flex apart do not resist movement.

Gillette’s argument is not persuasive. During examination, claim terms are given their broadest reasonable interpretation consistent with the

specification. *In re Zletz*, 893 F.2d at 321; *In re Prater*, 415 F.2d at 1404. Resisting movement does not equate to motionless. Gillette's claims do not require that the latches are incapable of all movement. The claims simply call for latches that are "sufficiently rigid to resist movement." It is neither unreasonable nor inconsistent with Gillette's specification that a latch intended to "resist movement" can still flex. If a latch obstructs or provides opposing tension to a force it is reasonable to regard it as having resisted movement even if it has, in an absolute sense, moved. For example, the same is true with moveable operated revolving doors. They resist movement and that is why one must force against it to move it. Yet, they move.

Petrillo discloses a blade dispenser having resilient retaining lugs or latch posts 24, 26 that extend upwardly from a bottom surface of the dispenser and include opposing recesses for engaging and retaining opposite sides of a blade unit 20. (Petrillo 1:21-24; 3:42-46.) Blade unit 20 is retained within the dispenser by its edges "snapping" into the opposing recesses. (Petrillo 3:4-12.) The blade unit is released by being pivotally or linearly drawn from the dispenser such that surfaces of the blade act as camming surfaces that cause the latch posts to flex apart. (Petrillo 3:28-31.) That is, the latch posts are sufficiently rigid to retain the blade within the dispenser until acted upon by a force suitable to temporarily deform the latch posts to release the blade. We reject Gillette's argument that Petrillo's latch posts are not "sufficiently rigid to resist movement during removal of a cartridge from the dispenser."

The anticipation rejection based on Kohring

The Examiner rejected claims 1-5, 8, 9, 21, 28, 31-35, 38-48, 51, and 52 under 35 U.S.C. § 102(b) as anticipated by Kohring. As with Petrillo,

Gillette disputes that Kohring satisfies the limitation in independent claims 1 and 28 of a “latch being sufficiently rigid to resist movement during removal of a cartridge from the dispenser.” Evidently, Gillette also disputes that Kohring’s cartridge C satisfies the requirement in claim 1 of a cartridge that has a “corresponding resilient feature” or the requirement in claim 28 of a cartridge with “an elongated housing having a resilient latching portion.”

Turning first to the limitation of a “latch being sufficiently rigid to resist movement,” the Examiner found that requirement satisfied by Kohring’s elements 38 and 39. According to the Examiner (Ans. 6:11-16):

each section comprising a pair of latches (38, 39 figure 10) shaped and positioned to interact with a corresponding resilient feature on the blade unit of the cartridge (38, 39 are latches, see in engagement with corresponding resilient feature: the extremes of the cartridge C), the latch being sufficiently rigid to resist movement during removal of a cartridge from the dispenser (column 3; lines 44-56, 62-65).

Gillette does not address the Examiner’s reliance on Kohring’s elements 38 and 39 as satisfying the claimed latches. Instead, Gillette argues that what constitutes latches in Kohring are flanges 32, 33 with detents 35, 36 that deflect in order for a cartridge to be removed and do not resist movement. (App. Br. 5:4-17.)

Gillette’s argument is not persuasive. As discussed above, Gillette’s claims are not limited to latches that do not move. Kohring discloses a means for retaining cartridges within a receptacle that is formed by flanges 32 and 33, detents 34 and 35, spacer elements 38 and 39, and support members 30 and 31. (Kohring 3:52-57.) Kohring expressly discloses that the spacer elements 38 and 39 support a cartridge “against sidewise movement.” (Kohring 3:55-58.) Kohring also discloses that the cartridge

retaining means is “designed of a flexibility to *firmly retain* the cartridge within the receptacle and release the cartridge from the receptacle for use.” (Kohring 4:22-25) (emphasis added). Components of the cartridge retaining means that operate to firmly retain a cartridge and prevent its sideways movement are “resistant to movement.” We reject Gillette’s argument that Kohring does not satisfy the requirement of a “latch being sufficiently rigid to resist movement during removal of a cartridge from the dispenser.”

We turn now to the requirement in claim 1 of a cartridge with a “corresponding resilient feature” and the requirement in claim 28 of “an elongated housing having a resilient latching portion.” The Examiner determined that in Kohring “the extremes of cartridge C” is a resilient feature and that the entire housing of the cartridge is a “resilient latching portion.” (Ans. 6:14-19.)

According to Gillette, “Kohring is silent regarding the construction of cartridge C, and thus there is no basis whatsoever for the Examiner’s assertion that ‘the entire housing [of the blade unit] is a resilient latching portion’ (Office action, page 6, lines 17-18).” (App. Br. 5:6-8.)

We reject Gillette’s argument. One with ordinary skill in the art is presumed to have knowledge apart from what the prior art references explicitly say. *See In re Sovish*, 769 F.2d 738, 743 (Fed. Cir. 1985). Furthermore, anticipation can be found when a claim limitation is inherent or otherwise implicit in the relevant reference. *Standard Havens Products, Inc.*, 953 F.2d at 1369.

Here, Kohring discloses “disposable cartridges” that are retained within a receptacle and dispensed from that receptacle after connection to a razor handle. (Kohring 1:5-10.) The Examiner determined that the housings

of those disposable cartridges are resilient because they are made of plastic which is an elastically deformable material. (Ans. 22:4-7.) That determination is reasonable as it is based on the knowledge that a person of ordinary skill in the art would have already possessed in evaluating Kohring's disclosure of disposable razor blade cartridges. The level of ordinary skill in the art at the time of the invention is such that a person of ordinary skill in the art would have known that "disposable cartridges" include standard disposable razor blade cartridges that are commercially available and have housings made of plastic. Gillette's argument that there is "no basis whatsoever" for the Examiner's determination does not account for a skilled artisan's understanding of the term "disposable cartridges" and the level of ordinary skill in the art. Gillette has not shown that the Examiner erred in determining that the housing of Kohring's blade cartridge C satisfies the requirement of a "corresponding resilient feature" or "resilient latching portion."

The obviousness rejections based on Kohring

The Examiner additionally rejected some of Gillette's claims as unpatentable under 35 U.S.C. § 103(a) based on Kohring. Specifically, the Examiner rejected claims 6, 7/5/3, 29, 30, 36, 37, 59, 60, and 66 as unpatentable over Kohring, claims 1, 18, 19, 20, 23-28, 48-50, 54, and 56-58 as unpatentable over Kohring and Petricca, and claims 55 and 67 as unpatentable over Kohring, Petricca, and Rozenkranc.

All of the claims rejected based in part on Kohring, except claims 66 and 67, depend directly or indirectly from claim 1 or 28. Gillette traverses the rejection of those dependent claims based only on arguments presented in connection with claims 1 and 28. As discussed above, Gillette has not

shown error in the Examiner's rejection of claims 1 and 28 as anticipated by Kohring.

Independent claim 66 also includes the limitation of a latch "being sufficiently rigid to resist movement during removal of a cartridge from the dispenser." Gillette makes the same argument with respect to that limitation as it has with claims 1 and 28. For the same reasons as those given above in the context of claims 1 and 28, the argument is rejected.

Claim 67 is independent and is reproduced below (Claims App'x 17:5-24):

67. A combination comprising

a cartridge dispenser comprising a housing structure including:

a base;

dividers, extending upwardly from the base, that define sections for receiving respective cartridges and retaining the cartridges in predetermined positions;

a stabilizing feature, disposed on an upper edge of each cartridge divider, constructed to engage the cartridge connecting portion and restrict movement of the cartridge connecting portion within an upper opening of the corresponding section;

a protective feature, disposed on the upper edge of each cartridge divider, constructed to prevent contact between the stabilizing feature and a rear edge of the cartridge; and

a plurality of latches, each section comprising a latch that releasably holds a respective cartridge in a latched position within the section; and

a replaceable razor blade cartridge comprising a blade unit and a cartridge connecting structure for connecting the blade unit to a

handle by movement of the handle toward the cartridge connecting structure, the blade unit including an elongated housing having a resilient latching portion for engagement by the latch on the cartridge dispenser, and a trimming blade mounted along the rear edge of the cartridge;

wherein the protective feature on the upper edge of each cartridge divider is positioned and configured to prevent damage to the trimming blade when the cartridge is removed from the cartridge dispenser.

The Examiner rejected claim 67 under 35 U.S.C. § 103(a) as unpatentable over Kohring, Petricca, and Rozenkranc.

Gillette disputes that the combination of those references satisfy the requirement of:

a protective feature, disposed on the upper edge of each cartridge divider. . . wherein the protective feature on the upper edge of each cartridge divider is positioned and configured to prevent damage to the trimming blade when the cartridge is removed from the cartridge dispenser.

According to the Examiner (Ans. 18:7-22):

The [c]artridge dividers of Petricca have already been combined with the holder of Kohring. In figure 3 of Petricca, 38 is seen to underlie 47, as opposed to the open space proximal the far edges of the structure. Element 38 is designed to underlie and support element 40- the clip portion of the cartridge, which indicates the relative lateral positioning of the clips, and shows that the clips when removed would cam with 47. . . the clips (40) will cam with the feature (47) and prevent 22 (the latching feature of Petricca) from damaging the trimming blade, which is disposed on the rear edge of the cartridge (as seen in Rozenkranc).

Petricca discloses that razor blade cartridge 12 includes clips 40 at the ends of blade unit 14. (Petricca 5:31-33.) Element 47 is disclosed simply as

“tops” of the upper portions 46 of angled dividers 42 of dispenser 10. (Petricca 5:39-46.) Evidently, the Examiner considers that the combined elements of the clips 40 of blade unit 14 and the “tops” 47 of dividers of the dispenser satisfy the claimed protective feature.

Petricca does not disclose a trimming blade or provide for any protection of such a blade. The Examiner’s statements that blade protection results from the clips 40 and tops 47 are based on mere speculation. The Examiner must provide a factual basis to support an obviousness conclusion and may not resort to speculation, assumptions, or hindsight reconstruction. *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). It is uncertain whether the clips 40 and tops 47 would protect or damage the blade. On this record, the Examiner has not made a sufficient showing that clips 40 and tops 47 of Petricca are protective in nature and will not damage a trimming blade upon contact.

We do not sustain the rejection of claim 67 under 35 U.S.C. § 103(a) as unpatentable over Kohring, Petricca, and Rozenkranc.

New Ground of Rejection under 37 C.F.R. § 41.50(b)

A claim is unpatentable under 35 U.S.C. § 112, first paragraph, if a claim element is set forth in purely functional language that does not invoke the restricted construction under 35 U.S.C. § 112, sixth paragraph, for elements expressed as a means or step plus function limitation. *Ex parte Miyazaki*, 89 USPQ2d 1207, 1217 (BPAI 2008) (precedential); *see also Sanada v. Reynolds*, 67 USPQ2d 1459, 1462 (BPAI 2003). In this case, two elements in claim 67 are expressed in purely functional language and are not recited in language that would invoke the application of 35 U.S.C. § 112, sixth paragraph. Those elements are: (1) “a stabilizing feature disposed on

an upper edge of each cartridge divider, constructed to engage the cartridge connecting portion and restrict movement of the cartridge connecting portion within an upper opening of the corresponding section”; and (2) “a protective feature, disposed on the upper edge of each cartridge divider, constructed to prevent contact between the stabilizing feature and a rear edge of the cartridge.” (Claims App’x 17:10-14.) The specification also does not specially define any limiting structural meaning for these terms.

Accordingly, pursuant to 37 C.F.R. § 41.50(b), we enter a new ground of rejection of claim 67 under 35 U.S.C. § 112, first paragraph, for lack of an enabling disclosure commensurate with the scope of claim 67, because the claimed “stabilizing feature” and “protective feature” are purely functional recitations and do not invoke the application of 35 U.S.C. § 112, sixth paragraph.

F. CONCLUSION

1. Gillette has not shown that the Examiner erred in finding that Petrillo satisfies the requirement of a latch that is “sufficiently rigid to resist movement during removal of a cartridge from the dispenser.”

2. Gillette has not shown that the Examiner erred in finding that Kohring satisfies the requirement of a latch that is “sufficiently rigid to resist movement during removal of a cartridge from the dispenser.”

3. Gillette has not shown that the Examiner erred in finding that the housing of Kohring’s disposable razor blade cartridge C has a “resilient feature” or is a “resilient latching portion.”

4. Gillette has shown that the Examiner erred in determining that the teachings of Kohrning, Petricca and Rozenkranc teach a protective feature that operates to protect a trimming blade from damage.

G. ORDER

The rejection of claims 1, 2, 4, 5/2, 6, 7/5/2, 8-11, 18, and 28 under 35 U.S.C. § 102(b) as anticipated by Petrillo is affirmed.

The rejection of claims 1-5, 8, 9, 21, 28, 31-35, 38-48, 51, and 52 under 35 U.S.C. § 102(b) as anticipated by Kohring is affirmed.

The rejection of claims 6, 7/5/3, 29, 30, 36, 37, 59, 60, and 66 under 35 U.S.C. § 103(a) as unpatentable over Kohring is affirmed.

The rejection of claims 1, 18, 19, 20, 23-28, 48-50, 54, and 56-58 under 35 U.S.C. § 103(a) as unpatentable over Kohring and Petricca is affirmed.

The rejection of claim 55 under 35 U.S.C. § 103(a) as unpatentable over Kohring, Petricca, and Rozenkranc is affirmed.

The rejection of claim 67 under 35 U.S.C. § 103(a) as unpatentable over Kohring, Petricca, and Rozenkranc is reversed.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides that “[a] new ground of rejection . . . shall not be considered final for judicial review.”

Section 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner....

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(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record....

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART; 37 C.F.R. § 41.50(b)

rvb

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